

S.B. NO. 1070

JAN 24 2013

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A BILL FOR AN ACT

RELATING TO MORTGAGE SERVICERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1       SECTION 1. Chapter 454M, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4       "§454M-     Investigation and examination authority.   (a)  
5 In addition to any other authority under this chapter, the  
6 commissioner shall have the authority to conduct  
7 investigations and examinations. The commissioner may access,  
8 receive, and use any books, accounts, records, files,  
9 documents, information, or evidence, including any other  
10 documents, information, or evidence the commissioner deems  
11 relevant to the inquiry or investigation, regardless of the  
12 location, possession, control, or custody of the documents,  
13 information, or evidence.

14       (b) For the purposes of investigating violations or  
15 complaints arising under this chapter, or for the purposes of  
16 examination, the commissioner may review, investigate, or

1 examine any licensee or person subject to this chapter, as  
2 often as necessary to carry out the purposes of this chapter.  
3 The commissioner may direct, subpoena, or order the attendance  
4 of, and examine under oath, all persons whose testimony may be  
5 required about loans or the business or subject matter of any  
6 examination or investigation, and may direct, subpoena, or  
7 order the person to produce books, accounts, records, files,  
8 and any other documents the commissioner deems relevant to the  
9 inquiry.

10 (c) Each licensee or person subject to this chapter  
11 shall provide to the commissioner upon request, the books and  
12 records relating to the operations of the licensee or person  
13 subject to this chapter. The commissioner shall have access  
14 to the books and records and shall be permitted to interview  
15 the officers, principals, mortgage loan originators,  
16 employees, independent contractors, agents, and customers of  
17 the licensed mortgage loan originator or person subject to  
18 this chapter concerning their business.

19 (d) Each licensee or person subject to this chapter  
20 shall make or compile reports or prepare other information as  
21 directed by the commissioner in order to carry out the  
22 purposes of this section, including:

23 (1) Accounting compilations;

1        (2) Information lists and data concerning loan  
 2                transactions in a format prescribed by the  
 3                commissioner; or

4        (3) Other information deemed necessary to carry out the  
 5                purposes of this section.

6        (e) In conducting any examination or investigation  
 7        authorized by this chapter, the commissioner may control  
 8        access to any documents and records of the licensee or person  
 9        under examination or investigation. The commissioner may take  
 10       possession of the documents and records or place a person in  
 11       exclusive charge of the documents and records. During the  
 12       period of control, no person shall remove or attempt to remove  
 13       any of the documents and records except pursuant to a court  
 14       order or with the consent of the commissioner. Unless the  
 15       commissioner has reasonable grounds to believe the documents  
 16       or records of the licensee or person under examination or  
 17       investigation have been, or are at risk of being, altered or  
 18       destroyed for purposes of concealing a violation of this  
 19       chapter, the licensee or owner of the documents and records  
 20       shall have access to the documents or records as necessary to  
 21       conduct its ordinary business affairs.

22       (f) To carry out the purposes of this chapter, the  
 23       commissioner may:

- 1        (1) Retain accountants, or other professionals and  
2        specialists, who may be exempt from chapter 76, as  
3        examiners, auditors, or investigators to conduct or  
4        assist in the conduct of examinations or  
5        investigations;
- 6        (2) Enter into agreements or relationships with other  
7        government officials or regulatory associations in  
8        order to improve efficiencies and reduce regulatory  
9        burden by sharing resources, standardized or uniform  
10       methods or procedures, and documents, records,  
11       information, or evidence obtained under this  
12       section;
- 13       (3) Use, hire, contract, or employ public or privately  
14       available analytical systems, methods, or software  
15       to examine or investigate the licensee or person  
16       subject to this chapter;
- 17       (4) Accept and rely on examination or investigation  
18       reports made by other government officials, within  
19       or without this State; and
- 20       (5) Accept audit reports made by an independent  
21       certified public accountant for the licensee or  
22       person subject to this chapter in the course of that  
23       part of the examination covering the same general

1           subject matter as the audit and may incorporate the  
2           audit report in the report of the examination,  
3           report of investigation, or other writing of the  
4           commissioner.

5           (g) The authority of this section shall remain in  
6           effect, whether a licensee or person subject to this chapter  
7           acts or claims to act under any licensing or registration law  
8           of this State, or claims to act without such authority.

9           (h) No licensee or person subject to investigation or  
10          examination under this section may knowingly withhold,  
11          abstract, remove, mutilate, destroy, or secrete any books,  
12          records, computer records, or other information.

13          (i) The commissioner may charge an examination or  
14          investigation fee, payable to the commissioner, based upon the  
15          cost per hour per examiner for all licensees and persons  
16          subject to this chapter examined or investigated by the  
17          commissioner or the commissioner's staff. The hourly fee  
18          shall be \$60 or an amount as the commissioner shall establish  
19          by rule pursuant to chapter 91. In addition to the  
20          examination or investigation fee, the commissioner may charge  
21          any person that is examined or investigated by the  
22          commissioner or the commissioner's staff pursuant to this  
23          section additional amounts for travel, per diem, mileage, and

1 other reasonable expenses incurred in connection with the  
2 examination or investigation, payable to the commissioner.

3 (j) Any person having reason to believe that this  
4 chapter or the rules adopted pursuant thereto have been  
5 violated, or that a license issued under this chapter should  
6 be suspended or revoked, may file a written complaint with the  
7 commissioner setting forth the details of the alleged  
8 violation or grounds for suspension or revocation."

9 SECTION 2. Section 454M-1, Hawaii Revised Statutes, is  
10 amended as follows:

11 (1) By adding a new definition of "NMLS" to be  
12 appropriately inserted and to read:

13 "NMLS", means a mortgage licensing system developed and  
14 maintained by the Conference of State Bank Supervisors and the  
15 American Association of Residential Mortgage Regulators for  
16 the state licensing and registration of state-licensed loan  
17 originators and other financial services providers, or any  
18 system provided by the Consumer Financial Protection Bureau."

19 (2) By repealing the definition of "Nationwide Mortgage  
20 Licensing System".

21 [~~"Nationwide Mortgage Licensing System" has the same~~  
22 ~~meaning as defined in section 454F-1."~~]

1           SECTION 3. Section 454M-4, Hawaii Revised Statutes, is  
2 amended by amending subsections (a), (b), (c), and (d) to read  
3 as follows:

4           "(a) An applicant for licensure shall file an  
5 application on a form prescribed by [~~the Nationwide Mortgage~~  
6 ~~Licensing System~~] NMLS or by the commissioner and shall pay an  
7 application fee of [~~\$500.~~] \$675. Each license shall expire on  
8 June 30 of each calendar year. A license may be renewed by  
9 filing a renewal statement on a form prescribed by [~~the~~  
10 ~~Nationwide Mortgage Licensing System~~] NMLS or by the  
11 commissioner and paying a renewal fee of [~~\$250.~~] \$425, at  
12 least four weeks prior to July 1 for licensure for the  
13 following year.

14           (b) To fulfill the purposes of this chapter, the  
15 commissioner may establish relationships or contracts with  
16 [~~the Nationwide Mortgage Licensing System~~] NMLS or other  
17 entities designated by [~~the Nationwide Mortgage Licensing~~  
18 ~~System~~] NMLS to collect and maintain records and process  
19 transaction fees or other fees related to licensees or other  
20 persons subject to this chapter.

21           (c) To the extent reasonably necessary to participate in  
22 [~~the Nationwide Mortgage Licensing System,~~] NMLS, the

1 commissioner may modify any or all of the requirements of  
2 section 454M-4(e) and (f).

3 (d) The commissioner may use [~~the Nationwide Mortgage~~  
4 ~~Licensing System~~] NMLS as an agent for requesting information  
5 from and distributing information to the United States  
6 Department of Justice, any governmental agency, or any other  
7 source, as directed by the commissioner."

8 SECTION 4. Section 454M-4.5, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§454M-4.5 Registration with** [~~Nationwide Mortgage~~  
11 ~~Licensing System~~.] NMLS. (a) The commissioner may require  
12 all mortgage servicers to register with [~~the Nationwide~~  
13 ~~Mortgage Licensing System~~.] NMLS.

14 (b) A mortgage servicer who holds a license that is  
15 valid as of June 30, 2013, shall be determined to be in  
16 compliance with the licensing provisions of this chapter until  
17 December 31, 2013."

18 SECTION 5. Section 454M-8, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "[~~§~~]**§454M-8**[~~§~~] **Powers of commissioner.** In addition to  
21 any other acts or conditions provided by law, the commissioner  
22 may:



- (1) Adopt, amend, or repeal rules, issue declaratory rulings or informal nonbinding interpretations, and investigate and act upon written consumer complaints;
- (2) Grant, deny, forfeit, renew, reinstate, or restore the license of any mortgage servicer;
- (3) Revoke, suspend, or otherwise limit the license of any mortgage servicer for any violation of the provisions in this chapter, or any rule or order of, or agreement with the commissioner;
- (4) Report any violation of this chapter or violation of federal or state law to the ~~[United States Commissioner of Housing and Urban Development]~~ Consumer Financial Protection Bureau or other federal agency having jurisdiction over the licensee;
- (5) Investigate and conduct hearings regarding any violation of this chapter, or any rule or order of or agreement with the commissioner; and
- (6) Do any and all things necessary or incidental to the exercise of the commissioner's power and duties, including the authority to conduct contested case proceedings under chapter 91."

1           SECTION 6. Statutory material to be repealed is  
2 bracketed and stricken. New statutory material is  
3 underscored.

4           SECTION 7. This Act shall take effect upon its approval.

5

INTRODUCED BY: 

BY REQUEST

**Report Title:**

Mortgage Servicers; Fees

**Description:**

Authorizes the Commissioner of Financial Institutions to conduct examinations and investigations and adjust the fees for mortgage servicer licensees to use NMLS.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO MORTGAGE  
SERVICERS.

PURPOSE: The purpose of this bill is to authorize the  
Commissioner of Financial Institutions to  
conduct examinations and investigations and  
adjust the fees for mortgage servicer  
licensees registering through NMLS.

Section 1 adds a new section to establish  
the Commissioner's authority to conduct  
investigations and examinations and provides  
specific authority and requirements that  
must be met by mortgage servicers.

Section 2 adds the definition of "NMLS".

Section 3 provides conforming amendments.

Section 4 provides that mortgage servicers  
with valid licenses as of June 30, 2013,  
need not meet the new requirements until  
after December 31, 2013.

Section 5 conforms state provisions to  
changes in the federal law.

MEANS: Add a new section to chapter 454M, Hawaii  
Revised Statutes, (HRS), and amend sections  
454M-1, 454M-4, 454M-4.5, and 454M-8, HRS.

JUSTIFICATION: NMLS has expanded beyond mortgage loan  
originator registration to allow other non-  
depository institutions to use its system.  
Consequently, NMLS changed its name from the  
Nationwide Mortgage Licensing System to NMLS  
so that the name of the data base is not  
limited to referring only to the original  
mortgage loan originators.

When NMLS expanded its data base to other  
industries, the fee charged to states using

NMLS for these other industries increased. This bill allows appropriate fees to be collected from this new category of registrants.

Housekeeping amendments in this bill address the name change of the Nationwide Mortgage Licensing System to NMLS and reflect the change in the federal regulator from the Housing & Urban Development Department to the Consumer Financial Protection Bureau.

This bill provides authority for the Commissioner to investigate and regulate mortgage servicers and to cooperate with other states in joint examinations of licensees operating in more than one state.

This bill extends existing licenses for current licensees until December 31, 2013, to conform with the renewal schedule used by NMLS.

Impact on the public: As DFI focuses its supervisory, regulatory, and examination on these licensees, DFI expects the industry to be more responsive and compliant with state and federal laws and in turn, consumers will be protected. The public will be able to see which companies are licensed in our state through the NMLS consumer access page.

Impact on the department and other agencies:  
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA 104.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval; however, section 4 of the bill will allow any licensee who holds a

valid license as of June 30, 2013, which is the current statutory renewal period, to be in compliance until December 31, 2013, if the commissioner requires the use of NMLS during the calendar year 2013. The renewal period in NMLS is December 31 of each year.